Supreme Court, U. S.
FILED
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APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 74-1520

RICHARD J. ELROD, ET AL.,

Petitioners,

vs.

JOHN BURNS, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 2, 1975.
CERTIORARI GRANTED OCTOBER 6, 1975.

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* The opinion of the Court of Appeals is included as Exhibit A, of the Appendix to the Petition for a Writ of Certiorari filed in this Cause. The opinion is also reported in 509 F. 2d 1133 (7th Cir. 1975).

APPENDIX.

RELEVANT DOCKET ENTRIES.

3–10–71	Filed Complaint and 4 copies.
3–12–71	Filed motion for preliminary injunction, filed by the plaintiff.
3–12–71	Filed affidavit of Fred L. Buckley in support of plaintiff's motion for preliminary injunction.
3–12–71	Filed affidavit of John Burns in support of plaintiff's motion for preliminary injunction.
3–12–71	Filed defendant reply to motion for preliminary injunction.
3–15–71	Filed the affidavit of Frank Vargas in support of plaintiff's motion for preliminary injunction.
3–17–71	Defendants reply to plaintiffs motion for a preliminary injunction.
3–29–71	Enter Finding of Fact (Draft), Conclusion of Law (Draft), Judgment order. It is ordered that the plaintiff's motion for a preliminary injunction against the defendants, be and the same is hereby denied.—Hoffman, J. cb
3–31–71	Filed defendant motion to dismiss.
4– 5–71	Filed motion of defendant to dismiss complaint.
4– 5–71	Filed plaintiff's appellant notice of appeal.
5–31–72	Order defendants motion to dismiss granted. (Draft)—Bauer, J. Mailed notices 6-1-72.
6–28–72	Filed Plaintiff's Notice of Appeal.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY, on behalf of themselves and all other persons who were employees of the Office of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,
Plaintiffs.

vs.

RICHARD J. ELROD, individually and as Sheriff of Cook County, Illinois, THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, a corporation; DEMOCRATIC COUNTY CENTRAL COMMITTEE OF COOK COUNTY and RICHARD J. DALEY, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic Central Committee of Cook County,
Defendants.

Case No. 71C607

COMPLAINT.

Plaintiffs, by their attorneys, John C. Tucker and Robert Byman, complain against defendants as follows:

Count I.

1. Jurisdiction of this action lies in this Court under Sections 1331 and 1343 of Title 28 of the United States Code.

The matter in controversy in this action exceeds the sum or value of $10,000, exclusive of interest and costs.

2. Plaintiffs John Burns, Frank Vargas and Joseph Dennard were employees of the Office of the Sheriff of Cook County, Illinois, on and prior to December 7, 1970. They were not protected by civil service or similar laws against arbitrary discharge from their employment.

3. Defendant Richard J. Elrod, a Democrat, is the Sheriff of Cook County, having taken office from the prior Sheriff, Republican Joseph I. Woods, on December 7, 1970.

4. For many years past and continuing to this time it has been the practice of the elected Sheriff of Cook County, when he assumes office from a Sheriff of a different political party, to replace all or substantially all of the non-civil service employees of the Sheriff's office who did not (a) Pledge their political allegiance to the political party of the incoming Sheriff; and/or (b) Agree to work for the election of other candidates of the political party of the incoming Sheriff in future elections; and/or (c) Contribute a portion of their wages to the political party of the incoming Sheriff; and/or (d) Obtain sponsorship in his job from a ward or township committeeman or other official office holder or member of the political party of the incoming Sheriff. All or substantially all persons hired to replace said non-civil service employees were and are required to satisfy one or more or all of the conditions set forth in subparagraphs (a)-(d) of this paragraph.

5. Each of the above named plaintiffs has been fired from his or her said employment by or at the direction or with the approval of defendant Elrod since December 7, 1970 for the reason that he or she was a Republican rather than a Democrat or because he or she did not have the requisite political sponsorship for such employment by an official of the Democratic Party or for failure to comply with one or more of the conditions set forth in subparagraphs (a)-(d) of paragraph 4 above.

6. Plaintiff Fred Buckley is presently still employed by the Sheriff of Cook County. He is not protected by civil service or similar laws against arbitrary discharge. He has not met or agreed to meet any of the conditions set forth in subparagraphs (a)-(d) of paragraph 4 above. Plaintiff Fred Buckley is informed and believes, based upon the practices described in paragraph 4 and based upon plaintiff's knowledge of the adherence of defendant Elrod to those practices in the replacement of other employees of the Sheriff's office since December 7, 1970, that he is in imminent danger of being fired from his employment by reason of his failure to meet the aforementioned conditions.

7. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons who were employed by the Office of the Sheriff of Cook County on December 7, 1970, and who are or were not protected by civil service or similar laws against arbitrary discharge from their employment. This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the plaintiffs are typical of the claims of the class. The plaintiffs will fairly and adequately protect the interests of the class. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class. The defendant has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to other available methods for a fair and efficient adjudication of the controversy.

8. Many members of the class represented herein in addition to plaintiffs Burns, Vargas and Dennard have recently been fired unlawfully by defendant for the reasons set forth in

paragraph 5, and others have been forced to comply with some or all of the conditions set forth in paragraph 4 in order to avoid being fired for such reasons. Some or all members of the class who are still employed by the Sheriff's Office in addition to plaintiff Fred Buckley are in imminent danger of such unlawful firings. Unless enjoined by this Court, many members of the class will soon be unlawfully fired for their failure to comply with the conditions set forth in paragraph 4 or will be unlawfully coerced into complying with said conditions by the defendant.

9. Said firings and threatened firings have violated or will violate plaintiff's rights to equal protection of the law, freedom of association, freedom of speech and due process of law, in violation of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and of Sections 1983, 1985, 1986 and 1988 of Title 42 of the United States Code.

10. As a consequence of said firings or threatened firings plaintiffs have been or will be unlawfully deprived of their employment and the income and other benefits therefrom, and have been or will be otherwise injured. Said injury is irreparable. In addition irreparable injury has been and will be suffered by the public as a result of the inefficient operation of the Sheriff's office and the waste of public funds which results from the practices described above.

11. Plaintiffs have no adequate remedy at law.

Count II.

1-11. Plaintiffs reallege paragraphs 1 through 11 of Count I as paragraphs 1 through 11 of Count II.

12. Defendant The Democratic Organization of Cook County (hereinafter referred to as "DOCC") is an Illinois not-for-profit corporation. Defendant the Democratic County Central Committee of Cook County (hereinafter referred to as "Central Committee") is a statutory organization of the Demo-

cratic party. Defendant Richard J. Daley is President of the Democratic Organization of Cook County and Chairman of the Democratic County Central Committee of Cook County.

13. Defendant Richard J. Elrod was slated to run for the Office of Sheriff of Cook County on the Democratic ticket by the Central Committee and was supported in his campaign for office by Defendants DOCC, the Central Committee and Richard J. Daley.

14. The unlawful firing and replacement of members of plaintiffs class as set forth above was and is being carried out by Defendant Richard J. Elrod or his agents, servants or employees under the direction and control of and in conspiracy with Defendants DOCC and Central Committee and Richard J. Daley. Defendants DOCC and Central Committee and Richard J. Daley have actively aided and abetted Defendant Richard J. Elrod in the unlawful conduct described above in one or more of the following ways:

(a) By screening the political party affiliation of members of plaintiff class.

(b) By soliciting members of plaintiff class to meet the conditions set forth in subparagraphs (a) through (d) of paragraph 4.

(c) By supplying letters of recommendation or approval, commonly known as patronage letters, to certain members of plaintiffs class who have been coerced into meeting the conditions set forth in paragraph 4.

(d) By screening and/or supplying patronage letters to replacements or potential replacements of the employees who are members of plaintiffs class who have been or are about to be unlawfully fired.

(e) By actively encouraging and soliciting Defendant Richard J. Elroy to pursue the unlawful practices described in paragraph 4, 5, 6 and 8 above.

(f) By other conduct and activities the exact nature of which is unknown to plaintiffs at the present time.

15. As a result of the aforementioned conspiracy between the defendants many members of plaintiffs class have been unlawfully deprived of their employment and the income and other benefits therefrom and have been otherwise injured and many other members of plaintiffs class are in imminent danger of being unlawfully fired for their failure to comply with the conditions set forth in paragraph 4 above and will thereby suffer irreparable injury unless the injunctive relief they seek is promptly granted.

16. Plaintiffs have no adequate remedy at law.

Count III.

1-5. Plaintiffs Burns, Vargas and Dennard reallege paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of Count III.

6. Said firings violated plaintiffs' rights to equal protection of the law, freedom of association, freedom of speech and due process, in violation of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and of Sections 1983, 1985, 1986 and 1988 of Title 42 of the United States Code.

7. As a consequence of said firings, plaintiffs have been unlawfully deprived of their employment and the income and other benefits therefrom, and have been otherwise injured.

WHEREFORE, plaintiffs pray that this Court:

A. Enter a judgment declaring that the rights of the plaintiffs and the class they represent under the United States Constitution and Code have been and, unless enjoined by this Court, will be violated by the acts and practices of defendants as alleged in this complaint, including specifically the conditioning of employment or any term or aspect of employment by the

Office of the Sheriff of Cook County, Illinois, upon an employee's or prospective employee's present or future political support of (including financial contributions to, political work for, or loyalty or allegiance to) the Democratic Party or any other political party or any official, unit or affiliate of the Democratic Party, or any other political party, or any candidate for public office endorsed or supported by the Democratic Party or any other political party or by any official, unit or affiliate of any such political party.

B. Grant a preliminary injunction against the defendants and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, pending final determination of this cause on its merits:

(1) Enjoining each of them from directly or indirectly (a) conditioning any employment covered by the Office of the Sheriff of Cook County, or any term or aspect of such employment, upon an employee's or prospective employee's present or future membership in or political support of the Democratic Party, or any official, unit or affiliate of the Democratic Party, or any candidate for public office endorsed or supported by the Democratic Party or by any such official, unit or affiliate thereof; (b) taking or threatening to take any action of a punitive nature or effect against any such employee or prospective employee, relating to his or her said employment or prospective employment, based upon such employee's or prospective employee's political beliefs or lawful political conduct; and (c) performing, inducing, aiding, abetting, participating in, cooperating with or encouraging any act which is proscribed by this paragraph B.(1).

(2) Ordering defendant Richard Elrod to prepare and promptly post or cause to be posted court-approved notices in each office and facility under his control as Sheriff of Cook County, informing all employees and other persons therein of the provisions of this order and to take such other court-approved acts as are necessary to insure that all persons covered

by this order are promptly and adequately informed of its provisions.

(3) Ordering defendant Richard Elrod to reinstate those plaintiffs, and all other members of plaintiffs' class who have been unlawfully fired from their employment with the Sheriff's Office since December 7, 1970, in the jobs they held with the Sheriff's Office at the time thereof without employment prejudice of any kind, or, in the alternative, ordering said Richard Elrod to establish a separate and segregated fund subject to the control of this Court into which defendant shall deposit, within a time set by the Court, sufficient funds to provide back pay for all members of plaintiffs' class who have already been discharged from their employment from the date of their discharge to the present and into which fund defendant shall continue to make deposits for back pay accrued during the pendency of this action until further order of the Court.

C. Enter an order making the aforementioned preliminary injunction permanent upon final determination of this cause.

D. Enter judgment in favor of plaintiffs and against defendants awarding each of the plaintiffs and each member of plaintiffs' class who has been unlawfully discharged compensatory damages in the amount of all wages and other moneys lost as a result of their unlawful firing, plus exemplary damages in the amount of $15,000 each, and awarding said plaintiffs their reasonable costs and expenses in this cause.

E. Grant plaintiffs such additional relief as may be necessary or proper, including the payment by defendant of such attorneys' fees to counsel for plaintiffs as the Court may deem just.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

MOTION FOR PRELIMINARY INJUNCTION.

Plaintiffs John Burns, Frank Vargas, Joseph Dennard and Fred Buckley on behalf of themselves and all others similarly situated by their attorneys, John C. Tucker and Robert L. Byman, respectfully move this Court for the entry of an order granting plaintiffs a preliminary injunction against defendants pending a final determination of this cause in accordance with the prayer for relief in the verified complaint herein.

In support of this motion there are attached hereto:

1. Plaintiffs' verified complaint.
2. The affidavit of John F. Burns.
3. The affidavit of Fred L. Buckley.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

AFFIDAVIT OF JOHN BURNS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

JOHN BURNS, being duly sworn, on oath states:

1. I am one of the plaintiffs in this cause. I reside at 3612 West 111th Street, Chicago, Illinois.

2. Commencing in approximately October, 1963, and continuously thereafter until on or about February 15, 1971, with the exception of a two-year period spent in the military service, I was an employee of the office of the Sheriff of Cook County. From approximately October of 1963 until November of 1964, I was a Sheriff's Officer or guard at the Cook County jail. After two years in the armed services, commencing approximately December, 1966, I rejoined the Sheriff's office as a Process Server in the Civil Division. Within a few months I was promoted to Supervisor in the Return Department. Within a few months thereafter, I took on an additional supervisory assignment in the Assignment Department. Within a few months after that, I was promoted to Deputy Supervisor of the Process Division. Thereafter, I was made Assistant Chief Deputy of the Process Division, and in approximately January, 1968, I became Chief Deputy of the Process Division, and thereafter also took on over-all supervision of all departments working on the Seventh Floor of the Civic Center for the Sheriff's office.

3. I am a Republican and was originally sponsored for my job with the Cook County Sheriff's office in 1963 by Republican State Senator Robert Hatch.

4. On or about December 7, 1970, following the November elections, Richard Elrod, a Democrat, replaced Joseph Woods, a Republican, as Sheriff of Cook County. In the period immediately before and after Mr. Elrod's taking office, I conferred with him on several occasions with respect to the organization and operations of the Sheriff's office.

5. Within a week or two of Mr. Elrod's taking office, I was informed by Robert Gore, who had been Chief Deputy Sheriff under Joseph Woods, that Mr. Elrod had told him that it would be necessary to fire fifty Sheriff's employees from the Civil Division immediately, in order to make room for Elrod's men. Mr. Gore and I then went to Mr. Elrod to confer with him and requested that he permit us to prepare the list of fifty Sheriff's employees to be fired so that we could eliminate those persons who had been least efficient in their jobs or who could be best spared pending training of their replacements. Mr. Elrod agreed to that procedure and we prepared such a list and delivered it to him, and the Sheriff's employees on that list were immediately fired with the possible exception of a few who were able to obtain Democratic sponsorship, pursuant to the procedures explained below.

6. Within a few weeks after Mr. Elrod took office, Mr. Ray Carvis was hired by Mr. Elrod as an employee of the Sheriff's office. During the time between Mr. Carvis' hiring and the time I left the Sheriff's office, Mr. Carvis devoted the majority of his time to acting as Personnel or Patronage Supervisor for the Sheriff's office in the replacement of existing employees of the Sheriff's office with Democratic patronage employees.

7. Shortly after Mr. Carvis came into the Sheriff's office. he and I had a conversation. Mr. Carvis told me that he would be in charge of the replacement of Sheriff's employees from the

Joseph Woods administration with "our people." He told me that he needed a certain number of jobs from the Process Department immediately. I do not recall the precise number of jobs which he said he needed immediately on this first occasion. He told me to prepare a list of persons to be fired and to bring it to him so that he could check and eliminate from the list those who had been able to obtain Democratic sponsorship. I prepared such a list and took it to Mr. Carvis. Mr. Carvis examined the list and compared it with a file of letters which he maintained. Mr. Carvis crossed several names off of the list, stating that those persons whose names he had crossed off had been responsored. He then directed me to fire the remaining persons on the list as quickly as possible, which I did.

8. Over the course of the next two or three weeks, the procedure described in paragraph 7 above was repeated on numerous occasions. Mr. Carvis would call me several times every day asking me to prepare a list of a certain number of persons to be fired in a certain department. I would prepare such lists and deliver them to Mr. Carvis who would then cross off certain names, stating that those persons had "gotten Democratic sponsorship" or "been responsored." In the context of our conversation, the term "responsored," when applied to an employee who had worked in the Sheriff's office under Sheriff Woods, means the same as the term "getting Democratic sponsorship."

9. During the period after Mr. Carvis first joined the Sheriff office, it was very difficult to get together with Mr. Carvis to deliver to him the lists which he would telephone me to prepare. Mr. Carvis would be in and out of the Sheriff's office frequently, and spent most of his time at City Hall or Democratic Headquarters or with Sheriff Elrod. After going through the procedure of preparing lists and delivering them to Mr. Carvis as described above for a week or two, I had a conversation with Mr. Carvis. I told Mr. Carvis that in light of the fact that it was very difficult for me to reach him to deliver

the lists to him so that he could eliminate from the lists those persons who had obtained responsorship from the Democratic organization, and in light of the fact that he was pushing me to get people fired as quickly as possible after he requested a certain number of jobs, it would be more efficient if he could permit me to have access to his file of sponsorship letters so that I could check off the names of persons who had been responsored myself, rather than having to wait for several days to catch him in his office. Mr. Carvis agreed to this procedure and thereafter on several occasions I prepared lists at his request and then checked the lists against his file of Democratic patronage letters, eliminating from the lists of employees to be fired those who had obtained Democratic sponsorship letters. These letters, which I reviewed on several occasions, came from Democratic Ward Committeemen and various Democratic party officeholders in the City of Chicago and Cook County, as well as State and National officeholders. For the most part these letters were addressed to Sheriff Elrod and stated in substance that the author of the letter was sponsoring a named person for a job with the Sheriff's office, naming the job (process server, clerk, secretary, etc.).

10. On several occasions, employees who were dismissed under the above procedures were able to obtain Democratic sponsorship letters after they had been informed that they were being dismissed. Those persons were immediately reinstated. On at least one occasion that I can recall, I received a telephone call from Mr. Carvis with respect to an employee whom I had dismissed at Mr. Carvis's request. Mr. Carvis informed me that the employee had just been responsored and that I should return his credentials to him and reinstate him, which I did. On another occasion, when I informed an employee that he would be discharged as of the end of the following day, the employee asked me if I couldn't hold off because he was expecting to get a Democratic sponsorship. I told him that my instructions from Mr. Carvis were to dismiss him and that he

would have to straighten the matter out with Mr. Carvis the following day. The next day the employee came in with a letter and told me that it was his Democratic sponsorship letter. I told him to take it to Mr. Carvis and later I received word from Mr. Carvis not to discharge that employee.

11. With the exception of some of the persons who were fired in the first group of fifty employees described in paragraph 5 above, all of the persons whom I was ordered to discharge pursuant to the procedures described above were performing their duties as employees of the Sheriff's office in an entirely efficient and satisfactory way. Many of them were among the most experienced and efficient employees of the office. In each case they were discharged solely because of the fact that they did not have Democratic sponsorship and in order to open a "slot" to be filled by someone who had Democratic sponsorship.

12. On several occasions between December 7, 1970, and January 15, 1971, I had conversations with Mr. Carvis and with Mr. Elrod, in which I urged them to hold off on some of their discharges because of the fact that the efficiency of the Sheriff's office was being injured by discharging too many key employees too rapidly before replacement employees with Democratic sponsorship could be trained to fill their jobs. Mr. Carvis and Mr. Elrod both stated that they understood this problem and they permitted me to select the employees to be fired (provided they did not have Democratic responsorship) in order to minimize the disruption as much as possible. However, on most occasions when I complained that they were firing too many people too fast, without adequate trained replacements, they insisted on maintaining the number of firings requested, stating that "we have to have the jobs."

13. On one occasion after I had received a request to prepare a list of persons to be fired in a particular department, which I felt would cause severe disruption in the operations of that department, I conferred on the subject with Mr. Elrod. Mr. Elrod stated that he understood the problem but that he had

to have those jobs immediately because "the fifth floor is pressuring me to put our people to work." On at least one other occasion, during a similar conversation, Mr. Elrod stated in substance, "Look, I need this done—I'm getting too much pressure from the man on the fifth floor." In Chicago political parlance, reference to "the fifth floor" or "the man on the fifth floor" is synonymous with, and commonly known to mean, the office of Mayor Richard J. Daley which occupies the fifth floor of the City Hall.

14. In about the last week of December, 1970, while I was conferring with Mr. Elrod, Mr. Elrod introduced me to Mr. Ronald Wronsky (I am not certain of the spelling) and told me that Mr. Wronsky would be my replacement but that he wanted me to stay on for several weeks to help train Mr. Wronsky. On or about January 13, 1971, Mr. Carvis informed me that Friday, January 15, would be my last day of employment. Because of my long service with the Sheriff's office, during which I had taken less vacation than I was entitled to, I was given four weeks' vacation starting January 15, 1971, and my employment officially terminated on or about February 15, 1971. It was understood that the termination of my employment was purely in order that my job might be made available to a person sponsored by the Democratic party. My replacement, Mr. Wronsky, is known to me to be the Secretary of the 45th Ward Democratic Organization.

15. Prior to my leaving the Sheriff's office, I prepared and gave to Mr. Carvis and Mr. Elrod a list of employees in key positions. I informed them that in my opinion it was essential that these persons be retained in their jobs as long as possible, and that they should begin training their replacements immediately in order to avoid disruption of the services of the Sheriff's office. I informed them that in my opinion it would take a minimum of six months to train adequate replacements for these key employees. Since I left the Sheriff's office, I have been informed that patronage replacement of Sheriff's employees

is continuing and that several of the key employees referred to above have been replaced.

16. Prior to the time when Mr. Elrod became Sheriff, Mr. Joseph Woods brought me a copy of a letter which he had received relating to the decision of the United States Court of Appeals in *Shakman, et al.* v. *The Democratic Organization of Cook County, et al.* In substance, the letter stated that under the *Shakman* decision it would be improper and illegal for the incoming Sheriff to fire employees of the Sheriff's office for purely political or patronage reasons. Mr. Woods instructed me to distribute copies of the letter and post it on bulletin boards in the area of the Sheriff's office on the seventh floor of the Civic Center, which I did. Thereafter, after Mr. Elrod had taken office, I had a conversation with Mr. Elrod in which I referred to the above-mentioned letter. I asked Mr. Elrod if it really meant anything and what he intended to do about it. Mr. Elrod stated, in substance, "As far as I'm concerned, it means absolutely nothing. This is the way the system has run since it started and I'm not going to change it."

Further affiant saith not.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

AFFIDAVIT OF FRED L. BUCKLEY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

FRED L. BUCKLEY, being duly sworn, on oath states:

1. I am one of the plaintiffs in the above cause. I reside at 3900 South Calumet Avenue, Chicago, Illinois.

2. In 1967 I became employed in the Office of the Sheriff of Cook County as a process server in the Process Department. The Sheriff of Cook County at that time was Joseph Woods. I was sponsored for my employment by Hamilton B. Talbert who was the Fourth Ward Republican Committeeman. I have remained an employee of the Sheriff's office as a process server from the time of my employment in 1967 until the present. I am presently responsible for services of process in the area bordered by 14th Street on the north, 26th Street on the south, Canal Street on the east and Western Avenue on the west.

3. Prior to the time that Richard Elrod became Sheriff of Cook County my supervisor in the Process Department was Mr. Maiorello (I am not certain of the spelling). Mr. Maiorello was fired from his position approximately a month after Mr. Elrod became Sheriff of Cook County. He was replaced by Mr. Sland (I am not certain of the spelling) who is presently my supervisor. It is my understanding that Mr. Sland is a Democrat.

4. Some time within a few days after Mr. Sland became employed by the Sheriff's office and became my supervisor I

had a conversation with Mr. Sland in the presence of several other persons who were employees of the Sheriff's office and who had obtained their employment prior to Mr. Elrod becoming Sheriff. Mr. Sland said to us, in substance, "The only sure way for you to keep your jobs is for you to get a Democratic sponsorship letter."

5. Since December 7, 1970 when Mr. Elrod became Sheriff of Cook County a large number of the employees of the Sheriff's office in the Process Department who were employees of the Department on and before December 7, 1970 have been fired. I do not know the exact number of employees who have been fired but I believe that it is well over one-half of those persons who were employees of the Process Department on December 7, 1970. To my knowledge, several persons who were employees of the Sheriff's office as of December 7, 1970 have switched from the Republic to the Democratic party and have obtained Democratic sponsorship letters. Those persons have not been fired from their employment.

6. Some time around the middle of February I had a conversation with an employee of the Sheriff's office known to me as Lieutenant Smitty. Smitty had been an employee of the Sheriff's office under Sheriff Woods and at that time was a Republican. Some time after Mr. Elrod became Sheriff Smitty switched from being a Republican to being a Democrat and, I believe, obtained Democratic sponsorship. At the time of the conversation referred to above Smitty was wearing a "Daley" button. Smitty asked me whether I had made contact with a Democratic sponsor. I told him that I had not. Smitty then said, in substance, "Why don't you go out and get one? You want to keep your job don't you?" I responded that I did not want to change parties. Smith asked me what the Republican party was going to do for me and I said as far as I knew, nothing. Smitty then said, in substance, "Well then you better get a Democratic sponsor, it's the only way to keep your job. You don't have anything to lose."

7. On March 9, 1971 I had a conversation with a woman known to me as Pauline who is a Clerk in the Process Department of the Sheriff's office and who was an employee of the Sheriff's office under Sheriff Woods. Pauline has also switched from the Republican party to the Democratic party since Mr. Elrod became Sheriff and at the time of our conversation was wearing a "Daley" button. Pauline also asked me, in substance, "Why I didn't try to get Democratic sponsorship so that I can keep my job."

8. Some time around the first week in January I had a conversation with a man known to me as Mack who is an Assistant Democratic Precinct Captain in the area around 14th Street and Newberry. Mack asked me whether I would like to obtain Democratic sponsorship so that I could keep my job. He stated, in substance, that if I would switch from the Republicans to the Democrats he thought I could get sponsorship from a man known as "Susie" who is the Democratic Precinct Captain in that area and that I could then work with Mack in his precinct. I told Mack that I would think about it and Mack set up an appointment for me with "Susie". I told Mack that I would think about it and had him set up the appointment because I thought that by doing so I might be able to keep my job a little longer. However, I did not keep the appointment with "Susie" because I do not wish to switch from the Republican to the Democratic party.

9. I do not have and do not intend to seek Democratic sponsorship and I believe that, as a result, I will be fired from my job in the Sheriff's office sometime in the near future unless an injunction is granted prohibiting the firing of Sheriff's employees for political reasons.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

AFFIDAVIT OF FRANK VARGAS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

FRANK VARGAS, being duly sworn, on oath states:

1. I reside at 427 North Lawler, Chicago, Illinois.

2. Commencing approximately October 22, 1969, and continuously thereafter until approximately February 19, 1971, I was employed by the Office of the Sheriff of Cook County as a bailiff and security guard for the Juvenile Court of Cook County.

3. I am a Republican and was sponsored for my job with the Office of the Sheriff of Cook County by Ed Moore, 30th Ward Republican Committeeman.

4. My supervisor, under Sheriff Woods, was Russell Gardner, and he had an assistant named Marge (whose last name I do not know). Approximately two weeks after Sheriff Elrod took office from Sheriff Woods, Gardner was replaced by Charles Meyers, a Democrat. Shortly thereafter, Marge was also replaced by a Democrat.

5. During the period following the election of Richard J. Elrod as Sheriff and his replacement, Gardner told me on several occasions that if I did not get Democratic responsorship I would be "viced" ("viced" is a word which means fired). After Gardner was replaced by Meyers, Meyers also told me on

several occasions that I would be fired unless I got Democratic responsorship.

6. On or about February 18, 1971, I had some personal trouble and called Meyers to tell him that I could not come to work that day. He told me that the next day, February 19, 1971, would be my last day on the job. I asked if I had done anything wrong in the performance of my duties. Throughout the course of my employment, I took less sick leave and personal leave than I was entitled to; I thought that I had been an efficient and faithful employee. Meyers told me that my being viced had nothing to do with my work, but that he had a Democratic replacement for me. He said something to the effect that "I have orders to let people go. I have to let 22 more people go after you."

7. After being fired, I received two weeks' vacation pay to which I was entitled since I had never taken a vacation. However, I have still not received any pay for the four days between February 15 and February 19, 1971.

Further affiant saith not.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

REPLY TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION.

Defendant, Richard J. Elrod, individually and as Sheriff of Cook County, Illinois, by his attorney, Edward V. Hanrahan, State's Attorney of Cook County, Illinois, objects to plaintiffs' motion for a preliminary injunction for the following reasons:

1. In the case at bar, plaintiffs have failed to demonstrate that irreparable injury may result if the preliminary injunction is not entered. Moreover, there has been no showing, in the affidavit attached to plaintiffs' motion, of an immediate danger or threat to plaintiffs' status.

2. There is no showing by the plaintiffs in this case of reasonable probability of succeeding on the merits of their claims.

3. If a preliminary injunction is issued in the case at bar, any possibility of damage to the plaintiffs which might be prevented is clearly outweighed by the possibility of impairment in the functioning of an important governmental office.

4. In the case at bar, the entry of a preliminary injunction before the Court determines whether it has jurisdiction of the cause would be improper.

5. Insofar as the preliminary injunction requests affirmative relief, there is no sufficient showing that such relief should be granted.

WHEREFORE, for the foregoing reasons, defendant, Richard J. Elrod, respectfully prays that plaintiffs' motion for a preliminary injunction be denied.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

REPLY TO MOTION FOR PRELIMINARY INJUNCTION.

Now come the defendants, The Democratic Organization of Cook County, a corporation; Democratic County Central Committee of Cook County and Richard J. Daley, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County, by Thomas A. Foran and Raymond F. Simon, their attorneys, and in reply for preliminary injunction here states as follows:

1. That a preliminary injunction herein does not lie in that such injunctions can only be granted in the discretion of the Court where there is a showing of "reasonable certainty" of ultimately prevailing in the proceedings.

2. That in the case at bar, defendants submit that there is no "reasonable certainty" of prevailing in the proceedings herein, in that:

a. The Court is without jurisdiction for want of a substantial federal question, and the requisite jurisdictional amount.

b. That the plaintiffs are without standing.

c. That the complaint fails to state a claim upon which relief can be granted.

d. That the issue involved herein is not a justiciable issue being in nature and substance a political question.

3. That a preliminary injunction can only be granted where there is no adequate remedy at law and where irreparable injury would otherwise result.

4. That in the case at bar, there is an adequate remedy at law and no irreparable injury can result since the suit herein relates to employment of the plaintiffs and in the event of their prevailing in the proceedings they can be reinstated with back pay and/or can be awarded damages.

5. That a preliminary injunction is improper and improvident if it does not safeguard the interest of all the parties to the proceedings.

6. That in the case at bar the proposed injunction would seriously and adversely affect the operation and administration of a public office of State government, to wit; the Sheriff's Office of Cook County, Illinois, an office charged with the exercise of police power in the interest of the citizens of Cook County who number in excess of 5,000,000 in that such injunction would affect without any hearing or determination of the merits herein:

a. The necessity of court hearings and/or review of each and every instance of hiring, firing, promotion or demotion of personnel of the said office during the pendency of the injunction.

b. The actual or probable disclosure of confidential and privilege law enforcement information relative to employment status where such factors were, are or may be the basis for hiring or discharge.

c. The establishment of a fund as to which no authority or appropriations exist, which would divert tax payers money from other essential governmental functions and/or the lawful purpose for which such funds were appropriated, or would require the termination or curtailment of other essential public services all to the damage and injury to the public interest and the proper administration of said office.

WHEREFORE, based on the above and foregoing reason the defendants respectfully pray that the Motion for Preliminary Injunction herein be denied.

• • • • • •

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY on behalf of themselves and all other persons who were employees of the Office of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,
Plaintiffs,

vs.

RICHARD J. ELROD, individually and as Sheriff of Cook County, Illinois, THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, a corporation; DEMOCRATIC COUNTY CENTRAL COMMITTEE OF COOK COUNTY and RICHARD J. DALEY, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County,
Defendants.

No. 71 C 607

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ORDER IN CONNECTION WITH THE PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION.

Findings of Fact.

1. The Court finds that the sufficiency or adequacy of the complaint has not been placed in issue and that no determination of the sufficiency or adequacy of the complaint has been made.

2. That no determination has been made relative to the propriety of a class action under Rule 23(c) of the Federal Rules of Civil Procedure and Rule 22 of the Civil Rules of the United States District Court for the Northern District of Illinois.

3. That the plaintiffs, John Burns, Frank Vargas, and Joseph Dennard are former employees of the Sheriff of Cook County, whose positions were not subject to civil service regulations and that plaintiff, Fred Buckley, is presently an employee of the Sheriff of Cook County, whose position is not covered by civil service regulations.

4. That the action purports to be filed on behalf of the four (4) named individuals and on behalf of the class of all persons who were employed by the Sheriff of Cook County on December 7, 1970, and whose positions are or were not covered by regulations under civil service or other laws against arbitrary discharge.

5. That the defendants are Richard J. Elrod, the Sheriff of Cook County; The Democratic Organization of Cook County, a corporation; the Democratic County Central Committee of Cook County; and Richard J. Daley, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County.

6. That the complaint alleges that the defendant, Richard J. Elrod, individually and in conspiracy with the other defendants, has been discharging employees of the Cook County Sheriff's office solely because they are Republicans; that only Sheriff's employees who switched parties and are able to obtain Democratic sponsorship, are being permitted to retain their positions; that the plaintiffs, John Burns, Frank Vargas, and Joseph Dennard, have already been discharged solely because

of their political party affiliations; that the plaintiff, Fred Buckley, has not yet been discharged but has been threatened with discharge if he is unable to obtain sponsorship by the Democratic Party; and that such acts or threats of discharge violate the plaintiff's rights under the First, Fifth and Fourteenth Amendments of the United States Constitution, in violation of 42 U. S. C. §§ 1983 1985, 1986, and 1988.

7. That the only showing of injury made by the plaintiffs is the loss of employment in the office of the Sheriff of Cook County.

JULIUS J. HOFFMAN,
United States District Judge.

Dated: March 29, 1971

Conclusions of Law.

1. The Court concludes that for the purpose of this motion for a preliminary injunction, the well-pleaded facts in the complaint has been conceded by the defendants, in open court, and are therefore assumed to be true.

2. That in order to prevail in a motion for a preliminary injunction, the plaintiffs must maintain the burden of showing that there is a substantial risk of irreparable injury to the plaintiffs' rights if immediate relief is not granted and that there is a likelihood that the plaintiffs will ultimately prevail in their action on the merits.

3. That the plaintiffs' allegations concerning injuries resulting from loss of employment as have been set forth in the complaint and affidavits in support of the motion, do not constitute a sufficient showing of irreparable injury to warrant a preliminary injunction.

4. That the plaintiffs have an adequate remedy at law.

5. That having determined that the plaintiffs have failed to make an adequate showing of irreparable injury, it is not necessary to rule and the Court therefore, does not rule on the question of whether or not the plaintiffs have made an adequate showing of a likelihood that they would ultimately prevail in their suit on the merits.

JULIUS J. HOFFMAN,
United States District Judge.

Dated: March 29, 1971

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY on behalf of themselves and all other persons who were employees of the Office of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,

Plaintiffs,

vs.

RICHARD J. ELROD, individually and as Sheriff of Cook County, Illinois, THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, a corporation; DEMOCRATIC COUNTY CENTRAL COMMITTEE OF COOK COUNTY and RICHARD J. DALEY, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County,

Defendants.

No. 71 C 607

JUDGMENT ORDER.

IT IS ORDERED that the plaintiffs' motion for a preliminary injunction against the defendants, be and the same is hereby denied.

ENTER:

JULIUS J. HOFFMAN,
United States District Judge.

Dated: March 29, 1971

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

MOTION TO DISMISS.

Now come the defendants, The Democratic Organization of Cook County, a corporation; Democratic County Central Committee of Cook County and Richard J. Daley, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County, by Thomas A. Foran and Raymond F. Simon their attorneys, and move to dismiss the complaint herein and in support state as follows:

1. That the Court lacks jurisdiction, in that:
   (a) The actual amount in controversy is less than ten thousand dollars, exclusive of interest and costs;
   (b) The purported claim herein does not involve a substantial federal question.

2. That the complaint herein does not involve a proper class action under Rule 23 of the Federal Rules of Civil Procedure.

3. That the plaintiffs herein lack standing as to all or part of the claim or claims sought to be alleged herein.

4. That the complaint fails to state a claim upon which relief can be granted in that:
   (a) No legal right of the plaintiffs have been violated;
   (b) No violation of plaintiffs' legal rights have occurred under color of state law;
   (c) The constitutional rights which plaintiffs assert are not absolute rights and no legally cognizable in-

fringement of such rights have occurred under the circumstances set forth in the complaint;

(d) That all or part of the claim or claims asserted herein do not involve a justiciable case or controversy;

(e) That all or part of the claim or claims asserted herein are not justiciable as constituting political question or questions;

(f) That all or part of the claim or claims asserted and relief sought is barred by equitable principles and doctrines.

WHEREFORE, defendants pray that the motion to dismiss be granted and the complaint herein be dismissed.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title omitted in printing.]

MOTION TO DISMISS.

Defendant, Richard J. Elrod, individually and as Sheriff of Cook County, Illinois, by his attorney, Edward V. Hanrahan, State's Attorney of Cook County, Illinois, moves this Court to dismiss plaintiffs' action for the following reasons:

1. The complaint fails to state a claim against this defendant upon which relief can be granted;

2. The complaint fails to raise a substantial Federal question;

3. Plaintiffs have no standing to bring this action since there is no right to government employment;

4. The political rights which plaintiffs claim are being violated or threatened with violation are not protected by the First Amendment;

5. The plaintiffs have no absolute right to engage in political activity while holding political employment;

6. The complaint raises a political question. Plaintiffs' claims are nonjusticiable;

7. The First Amendment as applied through the Fourteenth Amendment only protects a potential plaintiff against State action. No State action is involved in plaintiffs' claims;

8. Inasmuch as plaintiffs' claims are based upon violations of the Civil Rights Act (42 USC 1981, *et seq.*) this Court has no jurisdiction since none of the alleged violations or threatened violations of plaintiffs' civil rights have occurred under color of State law;

9. Plaintiffs bring this action in bad faith and with unclean hands in that their complaint reveals they were beneficiaries of the practices of which they are complaining;

10. The complaint discloses that this action is not properly brought as a class action;

11. The court lacks jurisdiction on the ground that the amount actually in controversy is less than ten thousand dollars exclusive of interest and costs.

* * * * *

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

JOHN BURNS, FRANK VARGAS, JOSEPH DENNARD, and FRED BUCKLEY on behalf of themselves and all other persons who were employees of the Office of the Sheriff of Cook County on December 7, 1970 and who were not protected by civil service or other laws against arbitrary discharge from their employment,
Plaintiffs,

vs.

RICHARD J. ELROD, individually and as Sheriff of Cook County, Illinois, THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, a corporation; DEMOCRATIC COUNTY CENTRAL COMMITTEE OF COOK COUNTY and RICHARD J. DALEY, individually and as President of the Democratic Organization of Cook County and as Chairman of the Democratic County Central Committee of Cook County,
Defendants.

No. 71 C 607

MEMORANDUM OPINION AND ORDER.

This cause comes on defendants' motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiffs John Burns, Frank Vargas and Joseph Dennard were employees in the office of the Sheriff of Cook County, Illinois on and before December 7, 1970 when Richard Elrod, a Democrat replaced Joseph Woods a Republican as Sheriff, it must be taken as true, for the purposes of this motion, that each of these named plaintiffs was discharged from the Sheriff's

Office either because of his affiliation with the Republican Party or because of his failure to switch political parties or to obtain Democratic political sponsorship. Plaintiff Fred Buckley, according to the complaint, is presently an employee of the Sheriff's Office imminently threatened with discharge unless he agrees to obtain Democratic sponsorship by agreeing to work for the Democratic Party. None of the plaintiffs' positions with the Sheriff's Office are or were protected by laws prohibiting arbitrary discharge.

This action, purportedly brought by the named plaintiffs on behalf of themselves and all others similarly situated, seeks to enjoin defendants Richard J. Elrod, Sheriff of Cook County, Illinois; the Democratic Organization of Cook County; the Democratic County Central Committee of Cook County; and Richard J. Daley, individually and as President of the Democratic Organization and Chairman of the Democratic County Central Committee from continuing to condition employment with the Sheriff's Office upon membership in, sponsorship by and active support of any political party.

Plaintiffs also seek to enjoin defendants from coercing or attempting to coerce employees of the Sheriff's Office into abandoning their political affiliation with or support of any political party and from coercing or attempting to coerce said employees into agreeing to join and support any political party by terminating or threatening to terminate their employment with the Sheriff's Office and/or by discriminating against them in the conditions of they employment. In addition, plaintiffs seek reinstatement, back wages and damages on behalf of employees who have already been terminated by defendant Elrod because of their inability or unwillingness to abandon their prior political affiliation and obtain political sponsorship from the Democratic Party.

Plaintiffs claim that defendants' actions have violated, *inter alia*, their First Amendment right to free political association. The instant motion raises the issue of whether the complaint states a claim upon which relief can be granted.

The excellent briefs filed by the parties have referred this Court to many authorities whose teachings have relevance to the instant case; however, only one authority has been cited which is directly on point and this Court believes it should be controlling.

In *Alomar* v. *Dwyer*, 447 F. 2d 482 (2nd Cir. 1971), *cert. denied*, ... U. S. ..... (Jan. 10, 1972), a municipal employee alleged she had been discharged from non-tenured employment because of her failure to switch political parties. In upholding a lower court's dismissal of the complaint, the Court of Appeals for the Second Circuit stated:

> The response to appellant's claim is found in Bailey v. Richardson, 86 U.S. App.D.C. 248, 182 F.2d 46, 59 (1950), aff'd per curiam, 341 U.S. 918, 71 S.Ct. 669, 95 L.Ed. 1352 (1950), where the court observed:
>
> > It is next said that the appellant's dismissal impinged upon the rights of free speech and assembly protected by the First Amendment, since the dismissal was premised upon alleged political activity. * * * But the plain hard fact is that so far as the Constitution is concerned there is no prohibition against the dismissal of Government employees because of their political beliefs, activities, or affiliations.
>
> The *Bailey* court teaches that the sole protection for government employees who have been dismissed for political reasons must be found in civil service statutes or regulations. 447 F.2d at 483.

Therefore, this Court, following the decision in *Alomar* v. *Dwyer, supra,* holds that the complaint in the instant case fails to state a claim upon which relief can be granted.

Accordingly, it is hereby ordered, adjudged and decreed that defendants' motion to dismiss is granted.

Dated: May 31, 1972

ENTER:

/s/ WILLIAM J. BAUER,

Judge.